

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH DECEMBER, 2007 / 16TH AGRAHAYANA, 1929

WP(C).No. 33648 of 2004(S)

OA.32/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONER:

1. ALL INDIA NAVAL CLERKS ASSOCIATION,
REP. BY ITS GENERAL SECRETARY, K.S.BABU,
UDC, SOUTHERN NAVAL COMMAND, KOCHI.
2. N.DEVI, ASSISTANT HEADQUARTERS,
SOUTHERN NAVAL COMMAND, KOCHI-4.
3. M.T.PAUL, ASSISTANT MATERIAL
ORGANISATION, NAVAL BASE, KOCHI.
4. SARLA G. NAIR, ASSISTANT,
NAVAL AIRCRAFT YARD, NAVAL BASE, KOCHI.
5. SANKARI AMMAL, ASSISTANT,
INS VENDURUTHY NAVAL BASE, KOCHI.

BY ADV. SRI.S.RADHAKRISHNAN

RESPONDENTS:

1. FLAG OFFICER COMMANDING-IN CHIEF,
SOUTHERN NAVAL COMMAND, KOCHI-4.
2. UNION OF INDIA, REP. BY THE
SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF FINANCE, NEW DELHI.
3. ADMINISTRATIVE OFFICER, GRADE-II,
CIVILIAN ADMINISTRATIVE OFFICE,
HEADQUARTERS, SOUTHERN NAVAL CAMMAND, KOCHI-4.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 7/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF ORDER PASSED BY THE CAT, PRINCIPAL BENCH IN OA 527/1997

EXT.P2-TRUE COPY OF OA 32.2002 ALONG WITH ANNEXURES

EXT.P3-TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS,

EXT.P4-TRUE COPY OF THE ORDER PASSED BY THE PRINCIPAL BENCH OF THE CAT IN OA NO.144/93 DATED 19.1.1996

EXT.P5-TRUE COPY OF ORDER OF THE DO. IN OA 981/1994 DATED 17.3.1999

EXT.P6-TRUE COPY OF ORDER IN OA 63/1997 DATED 14.9.99 OF THE GAUGHATTI BENCH OF THE CAT

EXT.P7-TRUE COPY OF THE ORDER PASSED BY THE CAT IN OA 32/02 DATED 1.10.2004

// TRUE COPY //

P.S. TO JUDGE

**K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.**

W.P.(C).NO.33648 of 2004-S

Dated this the 22nd day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The first petitioner is an association of Naval Clerks organised on All India basis. Respondents 2 to 5 are Assistants working in the Navy. The post of Assistant is a new cadre formed in the Navy with effect from 9.10.1997 as per the recommendation of the Vth Pay Commission. 10% of the Upper Division Clerks discharging complex nature of duties and Office Superintendents Grade II were taken together and converted into the cadre of Assistants. The dispute raised in this writ petition is the pay scale that should be granted to the said cadre.

2. The petitioners point out that prior to the pay revision made based on the IVth Pay Commission report, the pay scale of Assistants in the Central Secretariat was Rs.425 – 800. The scale of pay of those Assistants in lower formations was Rs.425 – 700. Pursuant to the IVth Pay Commission report the scale of pay was revised to Rs.1400 – 2600 and Rs.1400 – 2300 respectively for those working in the Secretariat and in the lower formations. The Assistants working in the lower formations raised a

claim that their scale of pay should be made equal to that of the Assistants working in the Central Secretariat. The said matter was referred for decision by Justice D. Bhaskaran. The said Commission passed an award equalising the scales of pay of the Assistants of the two streams. The Government accepted the award and issued consequential orders on 4.5.1990. Soon thereafter, the Government issued a notification revising the salary of Assistants working in the Central Secretariat, on 31.7.1990 with effect from 1.1.1986. Their scale was revised to Rs.1640 – 2900. Aggrieved by the revision made in favour of the Assistants in the Central Secretariat, the Assistants in the lower formations moved the Principal Bench of the Central Administrative Tribunal. As per Ext.P1 decision, the Tribunal ordered to equate the scales of pay of Assistants from both the streams. The result was that the scale of pay of Assistants in the lower formations was also revised to Rs.1640 2900. While so, the pay of Assistants was again revised pursuant to the recommendation of the Vth Pay Commission, with effect from 1.1.1996. As per the pay revision rules, the scale of pay of Assistants in the Central Secretariat was Rs.5500 – 9000 and in the lower formations it was Rs.5000 – 8000. The Assistants in lower formations contended that after the report of Justice Bhaskaran Commission, no change in the circumstances has taken place warranting a higher scale of pay for the Assistants of the Central Secretariat. Rather, it was pointed out that the job content of the Assistants of the lower

formations were the same and the finding of Justice Bhaskaran Commission in this regard is even now binding and therefore they also claimed the scale of pay of Rs.5500 – 9000. The Assistants from various departments other than Central Secretariat approached the Tribunal. The petitioners point out that the Tribunal has passed orders in the cases filed from 10 lower formations. They are Exts.P4 to P6. In the background of the above facts, the petitioners herein who are the Assistants in Navy, filed O.A. No.32/2002 before the Tribunal claiming the above said scale of pay for them also. They mainly relied on the aforementioned decisions of the other Benches of the Tribunal in relation to other lower formations.

3. The respondents resisted the application contending that the Assistants in the Navy cannot be equated with the Assistants in other lower formations. The Tribunal considered the matter and dismissed the O.A. filed by the petitioners, by Ext.P7 order. In Ext.P7, the Tribunal held that the Vth Pay Commission has already done a favour to the petitioners by upgrading the post of Office Superintendent Grade II as equivalent to the post of Assistants and a higher grade was also granted. Therefore, the Assistants of the Navy cannot claim a further benefit under the Vth Pay Commission. But liberty was granted to the petitioners to approach the Executive Government for reliefs. This writ petition is filed challenging Ext.P7.

4. Learned counsel for the petitioners contended that the Tribunal is bound by the decisions of the other Benches and therefore the O.A. should

have been allowed. But the contention raised by the petitioners, relying on the decisions of other Benches of the Tribunal, was not properly considered. Therefore, the petitioners pray for setting aside Ext.P7 and for remanding the matter to the Tribunal for fresh consideration in accordance with law, taking into consideration the decisions of other Benches also.

5. The respondents have filed a counter affidavit reiterating their earlier contentions. They point out that the Assistants in the Navy are only discharging usual general clerical work. They do not have any skill or technical knowledge and their qualification is only matriculation.

6. We feel that whether the nature of duties of the petitioners who are Assistants in the Navy are equivalent or comparable with the nature of duties in other lower formations and therefore they are entitled to get the same scale of pay enjoyed by other Assistants, is a matter which should be considered at the first instance, by the Government. It is for the Executive Government to raise the finance and meet the consequential burden. This court should not, normally interfere in matters involving financial commitments. If the Government fail to take a decision or wrongly take a decision, then this court may be able to interfere and review that decision.

7. Having regard to the facts of the case, the first petitioner is directed to place their grievance supported by grounds for being treated as equivalent to the Assistants in other formations, before the second respondent within one month from today. In that event, the said respondent

will consider the claim of the petitioners for granting the scale of pay presently enjoyed by the Assistants in Central Secretariat and other lower formations, to the Assistants in Navy. The second respondent shall take a decision on this point after affording an opportunity of being heard to one of the representatives of the first petitioner, within four months from the date of receipt of the representation, along with a copy of this judgment.

The writ petition is disposed of as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/